

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA07-1028

PHARMERICA and SRS

APPELLANTS

V.

DANIEL McMILLON

APPELLEE

Opinion Delivered August 27, 2008

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F507639]

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

The Arkansas Worker's Compensation Commission found that Daniel McMillon, an employee of appellant Pharmerica, sustained a compensable occupational disease when he was exposed to carbon monoxide emitted from a faulty water heater at his work place. Pharmerica appeals, and consistently with *Pharmerica v. Seratt*, ___ Ark. App. ___, ___ S.W.3d ___ (June 18, 2008), we reverse and remand for the Commission to make additional findings of fact.

In its opinion, the Commission found that appellee sustained a compensable occupational disease when he suffered a gradual exposure to carbon monoxide at work and that the exposure was causally connected to objective medical findings. On appeal, appellant argues (1) that the Commission erred in concluding that appellee suffered an occupational disease when he did not argue to either the Commission or the administrative law judge that he sustained an occupational disease; (2) that appellee's occupational disease claim was barred

by his failure to give Pharmerica the statutorily required notice of the claim; (3) that appellee failed to prove he sustained an occupational disease, as there was no objective medical evidence of a disease causally related to carbon monoxide exposure, and further, no evidence that appellee's medical condition was so distinctively associated with his occupation that there was a direct causal connection.

In *Seratt*, Pharmerica also challenged the Commission's finding that an employee—who was a co-employee of appellee and worked in the same facility as appellee—sustained a compensable occupational disease arising out of exposure to carbon monoxide from the same faulty water heater. In addressing Pharmerica's arguments on appeal, the *Seratt* court held that, despite Pharmerica's argument that it was not allowed to defend itself against the Commission's finding that the employee sustained a compensable occupational disease, the Commission was nevertheless within its power to render findings on whether the employee suffered a compensable occupational disease. Pharmerica also argued that because the employee did not give the statutorily required notice that she sustained an occupational disease, her claim was barred. See Ark. Code Ann. § 11-9-603(a)(2)(A) (Repl. 2002). As discussed in its opinion, the *Seratt* court remanded the case to the Commission to make findings of fact on the issue. The court also held that, if the Commission found no statutory bar to the claim, the Commission should also make additional findings of fact necessary to explain the basis of its conclusion on compensability. The *Seratt* court noted that while the Commission made findings of fact on the existence of objective findings to support a compensable injury, as well as on the causal relationship between the injury and the work, the

Commission failed to make findings regarding how the claim fit within the statutory definition of an occupational disease, particularly noting that it did not make the required findings that an occupational disease was “due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade.” *See* Ark. Code Ann. § 11-9-601(g)(1)(A) (Repl. 2002).

The issues raised in *Seratt* are also raised here, and the *Seratt* analysis applies here. While the Commission properly considered whether appellee sustained a compensable occupational disease, the Commission did not consider whether the claim was barred for failure to give the statutory notice or make findings necessary to explain the basis of its conclusion on compensability. Accordingly, as in *Seratt*, we reverse and remand for the Commission to make additional findings of fact on whether the claim is barred and, if disposition of this issue so requires, make findings necessary to explain the basis of its conclusion on compensability.

Reversed and remanded.

HEFFLEY and BAKER, JJ., agree.